

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

9 Daniel Lee Baker,) No. CV 09-0333-PHX-SMM (JRI)
10 Petitioner,)
11 vs.) **MEMORANDUM OF DECISION AND**
12 Charles L. Ryan, et al.,) **ORDER**
13 Respondents.)

15 Pending before the Court is Petitioner’s Petition for Writ of Habeas Corpus pursuant
16 to 28 U.S.C. § 2254 (Doc. 1). Upon screening, the Court dismissed three of Petitioner’s four
17 grounds for relief as improperly asserted civil rights claims (Doc. 7). The matter was then
18 referred to Magistrate Judge Jay R. Irwin for a Report and Recommendation (*id.*). On July
19 20, 2010, the Magistrate Judge filed a Report and Recommendation with this Court (Doc.
20 21). The Magistrate Judge recommended that Petitioner’s Petition for Writ of Habeas
21 Corpus be construed as a civil rights complaint and be dismissed with prejudice for failure
22 to state a claim (*id.*). To date, no objections have been filed.

STANDARD OF REVIEW

24 The Court “may accept, reject, or modify, in whole or in part, the findings or
25 recommendations made by the magistrate.” 28 U.S.C. § 636(b)(1)(C); see Baxter v. Sullivan,
26 923 F.2d 1391, 1394 (9th Cir. 1991). Parties have fourteen days from the service of a copy
27 of the Magistrate’s recommendation within which to file specific written objections to the
28 Court. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 6, 72. Failure to object to a Magistrate Judge’s

1 recommendation relieves the Court of conducting *de novo* review of the Magistrate Judge's
2 factual findings and waives all objections to those findings on appeal. See Turner v. Duncan,
3 158 F.3d 449, 455 (9th Cir. 1998). A failure to object to a Magistrate Judge's conclusion "is
4 a factor to be weighed in considering the propriety of finding waiver of an issue on appeal."
5 Id.

6 **DISCUSSION**

7 Having reviewed the Report and Recommendation of the Magistrate Judge, and no
8 Objections having been made by any party thereto, the Court hereby incorporates and adopts
9 the Magistrate Judge's Report and Recommendation. The Court construes Petitioner's
10 Petition for Writ of Habeas Corpus as a civil rights complaint pursuant to 42 U.S.C. § 1983
11 and dismisses the complaint with prejudice for failure to state a claim upon which relief can
12 be granted pursuant to 28 U.S.C. § 1915A (id.).

13 **CONCLUSION**

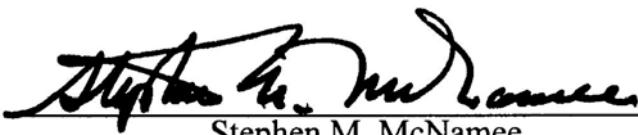
14 For the reasons set forth,

15 **IT IS HEREBY ORDERED** that the Court adopts the Report and Recommendation
16 of the Magistrate Judge (Doc. 21).

17 **IT IS FURTHER ORDERED** that Petitioner's Petition for Writ of Habeas Corpus
18 (Doc. 1), construed as a civil rights complaint, is **DISMISSED with prejudice**, thereby
19 terminating this case. The Clerk of the Court shall enter judgment accordingly.

20 **IT IS FURTHER ORDERED** that a Certificate of Appealability and leave to
21 proceed in forma pauperis on appeal are **DENIED** because Petitioner has not made a
22 substantial showing of the denial of a constitutional right.

23 DATED this 10th day of August, 2010.

24 
25 Stephen M. McNamee
26 United States District Judge
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